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UNITED STATES OF AMERICA

15 UNITED STATES DISTRICT COURT

16 FOR THE CENTRAL DISTRICT OF CALIFORNIA

17 UNITED STATES OF AMERICA,

18 Plaintiff,

19 v.

20 RAMI NAJM ASAD GHANEM,
21 aka "RAMI GHANEM,"

22 Defendant.

No. CR 15-704(A)-SJO

GOVERNMENT'S MOTION IN LIMINE
NO. 1 TO PRECLUDE ANY ARGUMENT OR
REFERENCE TO MANDATORY MINIMUM
SENTENCES OR SPECIFIC PENALTIES

Hearing Date: 10/22/2018

Hearing Time: 10:00 a.m.

Location: Courtroom of the
HON. S. JAMES OTERO

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24
25 Plaintiff United States of America, by and through its counsel
26 of record, the United States Attorney for the Central District of
27 California and undersigned counsel, hereby files its Government's
28

1 Motion In Limine No. 1 To Preclude Any Argument or Reference to
2 Mandatory Minimum Sentences or Specific Penalties.

3 This Motion is based upon the attached memorandum of points and
4 authorities, the files and records in this case, and such further
5 evidence and argument as the Court may permit.

6 Dated: September 24, 2018

Respectfully submitted,

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9 Assistant United States Attorney
Chief, National Security Division

10
11 /s/
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14 Attorneys for Plaintiff
UNITED STATES OF AMERICA

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

If convicted of conspiring to use and to transfer missile systems to destroy aircraft, in violation of 18 U.S.C. § 2332g, defendant Rami Ghanem faces a mandatory minimum sentence of twenty-five years in prison and a statutory maximum sentence of life in prison. The remaining charges against defendant carry statutory maximum sentences ranging between five and twenty years' imprisonment.

In pretrial proceedings, including in discussions with the prosecution team, defense counsel has repeatedly opined that the imposition of the mandatory minimum sentence could effectively be a life sentence for this defendant. This argument should have no place at trial, and the Court should apply longstanding Ninth Circuit law to prohibit any discussion of, or references to, mandatory minimum sentences or any of the specific punishments defendant is facing if convicted.

II. FACTUAL BACKGROUND

On December 22, 2015, defendant Ghanem was charged in an original four-count indictment (the "Indictment") with violations of 22 U.S.C. § 2778 (Arms Export Control Act), 18 U.S.C. § 554 (smuggling), and 18 U.S.C. § 1956 (money laundering). A superseding indictment filed on March 24, 2017, charged defendant with three additional counts alleging violations of 18 U.S.C. § 371 (conspiracy), 22 U.S.C. § 2778 (Arms Export Control Act), and 18 U.S.C. § 2332g (conspiracy to use and to transfer missile systems designed to destroy aircraft) (the "First Superseding Indictment").

1 On June 22, 2018, this Court granted the Government's motion to join
2 the Indictment and the First Superseding Indictment.

3 As indicated above, the charges against defendant Ghanem carry
4 statutory maximum sentences ranging between five years' and life
5 imprisonment, and the section 2332g charge carries a 25-year
6 mandatory minimum sentence.

7 **III. LAW APPLICABLE TO EVIDENCE OF POSSIBLE SENTENCES**

8 Defendant and his counsel should be precluded from discussing
9 both the general concept of mandatory minimum sentences and
10 defendant's specific sentencing exposure, as that may lead the jury
11 to base its verdict on improper considerations of punishment.

12 "It has long been the law that it is inappropriate for a jury to
13 consider or be informed of the consequences of their verdict."
14 United States v. Frank, 956 F.2d 872, 879 (9th Cir. 1991). As the
15 Supreme Court explained in Shannon v. United States, 512 U.S. 573
16 (1994):

17 The principle that juries are not to consider the
18 consequences of their verdicts is a reflection of the basic
19 division of labor in our legal system between judge and
20 jury. The jury's function is to find the facts and to
21 decide whether, on those facts, the defendant is guilty of
22 the crime charged. The judge, by contrast, imposes
23 sentence on the defendant after the jury has arrived at a
24 guilty verdict. Information regarding the consequences of
25 a verdict is therefore irrelevant to the jury's task.
26 Moreover, providing jurors sentencing information invites
27 them to ponder matters that are not within their province,
28 distracts them from their fact-finding responsibilities,
and creates a strong possibility of confusion.

24 Id. at 579.

25 The Ninth Circuit reaffirmed this long-settled principle just
26 this month, rejecting the defendant's argument that the district
27 court erred in precluding him from informing the jury of the
28 mandatory minimum sentence that he faced if convicted. See United

1 States v. Lynch, -- F.3d. --, 2018 WL 4354373, *13 (9th Cir. Sept.
2 13, 2018). There, the Ninth Circuit held that the jury was not
3 entitled to be informed of the mandatory minimum sentence because "it
4 is well established that when a jury has no sentencing function, it
5 should be admonished to 'reach its verdict without regard to what
6 sentence might be imposed.'" Id., quoting Shannon, 512 U.S. at 579.

7 The well-settled principle that the jury should not be informed
8 of the punishment a defendant faces if he is convicted is reflected
9 in the Ninth Circuit Model Jury Instruction 7.4, which provides:
10 "The punishment provided by law for this crime is for the court to
11 decide. You may not consider punishment in deciding whether the
12 government has proved its case against the defendant beyond a
13 reasonable doubt." Ninth Cir. Crim. Jury Instr. 7.4 (2010). The
14 Supreme Court and the Ninth Circuit have held that the jury should
15 be instructed that their function is not to consider or speculate as
16 to the punishment that may flow from their decision. See, e.g.,
17 Rogers v. United States, 422 U.S. 35, 40 (1975) (holding the jury
18 should have been admonished "that the jury had no sentencing
19 function and should reach its verdict without regard to what
20 sentence might be imposed"); United States v. Reed, 726 F.2d 570,
21 579 (9th Cir. 1984) (holding that district court properly instructed
22 jury that the "punishment provided by law for the offenses charged
23 in the indictment are matters exclusively within the province of the
24 court. It should never be considered by the jury in any way in
25 arriving at an impartial verdict as to the guilt or innocence of the
26 accused.").

27 The jury's verdict should be based on the facts presented at
28 trial, rather than on their possible sympathy for defendant or their

1 personal evaluation of the whether the sentence mandated by the law
2 for a particular violation seems appropriate. See, e.g., United
3 States v. Scarmazzo, 554 F. Supp. 2d 1102, 1109 (E.D. Cal. 2008)
4 (granting government's motion in limine to exclude, among other
5 things, testimony regarding potential punishment and any mention of
6 penalties or prison terms in "medical marijuana" case); Patterson v.
7 Runnels, 288 F. Supp. 2d 1092, 1099-1100 (C.D. Cal. 2003) (Klausner,
8 J.) ("The jury is not to consider the consequences of its verdict,
9 and should be instructed to reach its verdict without regard to what
10 sentence might be imposed."); Lacy v. Lewis, 123 F. Supp. 2d 533,
11 552 (C.D. Cal. 2000) (Letts, J.) (holding petitioner had no
12 constitutional right to advise jury that he was being prosecuted
13 under California's Three Strikes Law).

14 **IV. CONCLUSION**

15 For the foregoing reasons, the government respectfully requests
16 that this Court preclude any evidence, argument, or other reference
17 to the mandatory minimums or defendant's sentencing exposure at
18 trial.